IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 246 OF 2005

Jai Ganesh Rahivasi Mandal ..Appellants

versus

The Municipal Corporation of
Greater Mumbai & Anr. ..Respondents

Mr. R. D. Mishra for the Appellants.
Mr. J. J. Xavier for the Respondent No.1 - MCGM.
Mr. S. R. Rajguru for the Respondent No.2.

CORAM : D. G. DESHPANDE,J.

DATE : 19TH SEPTEMBER,2005

P.C. :

1. Heard Counsel for the Appellants, Respondent No.1 MCGM and Respondent No.2 Union of India.

2. Appellants is the Plaintiffs. It is a Mandal, Jai Ganesh Rahivasi Mandal allegedly representing about 55 members. They have constructed structures in the year 1989. The structures are in between the Railway line and the municipal road at Bhandup. They filed a suit before the City Civil. Court, Mumbai, for injunction that

they should not be evicted without following due process of law. That suit came to be dismissed and hence this Appeal.

3. Counsel for the MCGM had earlier made a statement that the structures of the residents in that strip of land were demolished and this fact is asserted by the MCGM in their affidavit. This fact was disputed by the appellants, therefore R & P was called. Now from the R & P. Counsel for the MCGM has drawn my attention to the affidavit of Kamlesh Raghunath Sakharkar, Junior Engineer of MCGM, wherein in paragraph 6(a) he has stated that all structures were demolished in the year 1999. Counsel for the MCGM alos pointed out that prior thereto these structures were demolished, but again they were erected within no time.

4. Counsel for the Appellants tried to contend that the demolition report is not in respect of all the structures. No particulars of demolition have been given and that the appellants - plaintiffs are there on the aforesaid strip of land since before 1990. The trial court, according to him, wrongly dismissed the suit on the ground that the original documents were not filed.

5. The crucial question is about the right of

the appellants - plaintiffs over the suit site on that strip of land between railway line and Municipal Road.

6. Counsel for the Respondent no.2 - Union of India pointed out that this land even as per the record belongs to the Union of India and the policy of the Corporation about unauthorised structures, does not apply to them. He relied upon an unreported Judgment of the **Division Bench of this Court dated 19.10.2001 in Writ Petition No. 2095 of 2001 Dalit Nagar Rahivasi Sahakari Grihanirman Sanstha & Anr. vs. Municipal Corporation of Greater Mumbai & ors.** wherein the Court has held that Ordinance issued in this regard regarding regularisation of structures or authorised or unauthorised structures, cannot have and does not have any applicability to the land of the Central Government or the Port Trust.

7. The basic and inherent defect in the case of the appellants - plaintiffs that they have no right to the property but they want that before demolition due process of law should be followed. The question is as to how many times it should be done. As per the affidavit of MCGM these structures were demolished about 15 times but still again they came on the spot. Therefore, in view of these

submissions of the Counsel for the Union of India that the Policy of the State Government and the MCGM regarding unauthorised and authorised structures, does not apply to the structures of the Union of India, therefore the appellants cannot claim any protection. Secondly, they have failed to establish any right. The suit was rightly dismissed. No interference is called for. Appeal is dismissed along with Civil Application. Prayer for interim relief to continue, is rejected.

19.9.2005 (D.G. DESHPANDE, J.)